

1 **CHRISTENSEN JAMES & MARTIN**

2 KEVIN B. CHRISTENSEN, ESQ.

3 Nevada Bar No. 00175

4 WESLEY J. SMITH, ESQ.

5 Nevada Bar No. 11871

6 7440 W. Sahara Avenue

7 Las Vegas, Nevada 89117

8 Telephone: (702) 255-1718

9 Facsimile: (702) 255-0871

10 *Attorneys for Plaintiffs*

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12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 * * * * *

15 EMPLOYEE PAINTERS WELFARE TRUST;
16 PAINTERS VACATION TRUST; PAINTERS
17 JOINT COMMITTEE; PAINTERS JOINT
18 APPRENTICESHIP TRAINING COMMITTEE;
19 PAINTERS INDUSTRY PROMOTION FUND;
20 PAINTERS JOINT COMMITTEE INDUSTRY
21 PROMOTION FUND; PAINTERS ORGANIZING
22 FUND; PAINTERS LABOR MANAGEMENT
23 COOPERATION COMMITTEE; PAINTERS
24 SAFETY TRAINING TRUST, each acting by and
25 through their designated fiduciaries, John Smirk
26 and/or Thomas Pfundstein; and the
27 INTERNATIONAL UNION OF PAINTERS AND
28 ALLIED TRADES INDUSTRY PENSION
TRUST FUND, acting by and through its
designated fiduciary, Gary J. Meyers,

CASE NO.: 2:09-cv-02208-GMN-PAL

JOINT INTERIM STATUS REPORT

Plaintiffs,

vs.

ATLAS PAINTING & DRYWALL, LLC, a
Nevada limited liability company; ATLAS
BUILDING & DEVELOPMENT, LLC, a Nevada
limited liability company; AUDRA MARIE
TUBIN, individually; KEITH TUBIN, individually;
ERNEST R. CORTEZ, JR., individually;
KATHRYN MACK, individually; TRAVELERS
CASUALTY & SURETY CO. OF AMERICA, a
foreign corporation qualified to act as surety in the
State of Nevada; INTERNATIONAL FIDELITY
INSURANCE COMPANY, a foreign corporation
qualified to act as surety in the State of Nevada;
JOHN DOES I-XX, inclusive; and ROE ENTITIES
I-XX, inclusive,

Date: N/A
Time: N/A

Defendants.

CHRISTENSEN JAMES & MARTIN
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 § FAX: (702) 255-0871

1 The above-named Plaintiffs, Employee Painters Welfare Trust, et.al. ("Plaintiffs" or
2 "Trust Funds"), by and through their attorneys, Christensen James & Martin, hereby submit their
3 Interim Status Report pursuant to LR 26-3, as follows:

4 **1. Estimated Time for Trial:** Four (4) to Five (5) Days.

5 **2. Anticipated Trial Dates:** The Trial date for this matter has been set for December 21,
6 2010 at 8:30 a.m., with calendar call on December 14, 2010 at 8:30 a.m. In the alternative, the
7 Parties presently anticipate being available to try the case anytime during the weeks of January 3,
8 2011, January 10, 2011 and January 17, 2011, as convenient to the Court.

9 **3. Opinion of Counsel Regarding the Effects of Anticipated Substantive Motions:**

10 There are currently no dispositive motions before the Court. In the event the ongoing settlement
11 negotiations fail, the Parties anticipate that a Motion for Summary Judgment may be filed by
12 Plaintiffs.

13 **4. Status of Discovery Completed to Date:** The focus of the Parties' discovery efforts to
14 date has been the completion of two (2) payroll compliance Audits, one of the signatory entity,
15 Atlas Painting & Drywall, LLC ("Atlas Painting"), and one of the alleged alter-ego entity, Atlas
16 Building & Development, LLC ("Atlas Building").

17 a. Status of Atlas Painting Audit: A Stipulation and Order for completion of the
18 Atlas Painting Audit was entered on January 27, 2010 [Doc. 18]. Atlas produced its payroll
19 documents and the Auditor produced preliminary Audit schedules in mid-February. Since that
20 time, the total number of hours scheduled has not changed, however, the number of hours
21 attributable to certain projects and general contractors, particularly general contractor MIG West,
22 Inc., has fluctuated. The Auditor requested that additional information be provided from Atlas
23 Painting to substantiate the hours reported on its job cost reports. Atlas Painting agreed to
24 provide the information by Stipulation and Order entered on May 24, 2010 [Doc. 34]. The
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1 additional information was provided to the Auditor on June 9, 2010. The Auditor is in the
2 process of reviewing the information and revised Audit schedules should be produced with the
3 next two (2) to three (3) weeks.

4 b. Status of Atlas Building Audit: A Stipulation and Order for completion of the
5 Atlas Building Audit was entered on March 24, 2010 [Doc. 34]. Atlas Building produced its
6 payroll information to the Auditor in early May 2010. The Auditor produced preliminary Audit
7 schedules on June 9, 2010. After reviewing the schedules, Atlas Building provided limited
8 additional information to the Auditor on June 18, 2010. The Plaintiffs have requested that Atlas
9 Building supplement the additional information. The Parties will conduct a joint review of the
10 schedules. The Auditor will verify any additional information and, if necessary, update the
11 schedules. The Parties anticipate that this process will be completed within the next few weeks.
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13 **5. Pending Discovery:** The Parties had originally planned to conduct depositions during
14 the week of March 22, 2010. Those depositions have since been rescheduled three times in order
15 to accommodate the completion of the Audits and possible settlement discussions. The parties
16 now plan to conduct the depositions July 8-9, 2010, or shortly thereafter, in the event settlement
17 is not possible. The parties also plan to complete discovery, such as interrogatories, requests for
18 admissions and requests for production of documents, as allowed by the Federal Rules of Civil
19 Procedure, within the time and deadline (August 19, 2010) set by the Court's Order dated March
20 10, 2010 [Doc. 31], in the event settlement is not possible.
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22 **6. Settlement Negotiations:** The Parties remain optimistic that settlement is possible in
23 this case. The Parties have discussed the possibility of settlement on several occasions.
24 However, the Parties agree that serious settlement discussions will not be fruitful until the Audits
25 are complete and final. The Parties anticipate that the Audits will be completed by the second
26 week of July 2010. Upon completion of the Audits, the Parties will meet and confer regarding
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1 settlement. In the event that settlement is not possible, the Parties have tentatively scheduled
2 depositions for the end of the second week of July 2010 and will move forward with remaining
3 discovery. In any event, the Parties do not plan to request an extension of the discovery cutoff
4 date (August 19, 2010).

5 DATED this 21st day of June 2010.
6

7 Submitted by:

8 CHRISTENSEN JAMES & MARTIN

9 By: /s/

10 Wesley J. Smith, Esq.
11 Nevada Bar No. 11871
12 7440 W. Sahara Avenue
13 Las Vegas, Nevada 89117
14 *Attorneys for Plaintiffs*

Approved as to Form and Content by:

KEITH E. GREGORY & ASSOCIATES

By: /s/

Keith E. Gregory, Esq.
Nevada Bar No. 00232
2300 W. Sahara Ave., Suite 680
Las Vegas, NV 89102
Attorneys for Defendants

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CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On the date of filing of the foregoing papers with the Clerk of Court I caused a true and correct copy to be served in the following manner:

- ELECTRONIC SERVICE: Pursuant to Local Rule LR 5-4 of the United States District Court for the District of Nevada, the above-referenced document was electronically filed and served on all appearing parties through the Notice of Electronic Filing automatically generated by the Court.

UNITED STATES MAIL: By depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed to the parties at their last-known mailing address(es):

OVERNIGHT COURIER: By depositing a true and correct copy of the above-referenced document for overnight delivery via a nationally-recognized courier, addressed to the parties listed on the attached service list at their last-known mailing address.

FACSIMILE: By sending the above-referenced document via facsimile to those persons listed on the attached service list at the facsimile numbers set forth thereon.

CHRISTENSEN JAMES & MARTIN

By: /s/ Kevin B. Christensen